

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RONALD KOPAL, et al.,  
Plaintiffs,

No. CIV S-05-363-DFL-JFM

v.

PRETRIAL CONFERENCE ORDER

MARTEN TRANSPORT, et al.,  
Defendants.

\_\_\_\_\_  
AND RELATED COMPLAINT-IN-  
INTERVENTION

\_\_\_\_\_  
Pursuant to court order, a Pretrial Conference was held on May 22, 2007 at 2:00 p.m. Suzanne M. Trimble, Esq. appeared as counsel for plaintiff in intervention, Stevens Transport, Inc., and Kevin J. Gray, Esq. appeared for defendants Marten Transport, Ltd. and Leslie D. Bigby. After hearing, the court makes the following findings and orders:

I. JURISDICTION/VENUE

Jurisdiction is predicated upon 28 U.S.C. §§ 1332 and 1441,

1 and has previously been found to be proper by order of this  
2 court, as has venue. Those orders are confirmed.

3 II. JURY/NON-JURY

4 The case will be tried to a jury of nine.

5 III. STATEMENT TO BE READ TO JURY

6 Seven days prior to trial the parties shall submit a joint  
7 statement of the case that may be read to the jury at the  
8 beginning of jury selection.

9 IV. UNDISPUTED FACTS

10 On March 8, 2003, while in the process of parking a  
11 tractor-trailer owned by defendant Marten Transportation in a  
12 parking space at the Flying J Truckstop in Ripon, California,  
13 defendant Leslie D. Bibgy backed his tractor-trailer into the  
14 tractor-trailer owned by Stevens Transport, Inc. The tractor-  
15 trailer owned by Stevens Transport, Inc. was parked in a space  
16 at the Flying J Truckstop. Plaintiff Ronald Kopal was in the  
17 tractor-trailer owned by Stevens Transport, Inc.

18 Plaintiff in intervention Stevens Transport, Inc. has paid  
19 benefits to and on behalf of its employee as a result of the  
20 incident.

21 The undisputed facts may be treated as stipulations.

22 V. DISPUTED FACTUAL ISSUES

23 Plaintiff claims that the force of the collision caused  
24 plaintiff Ronald Kopal to fall out of the upper sleeper berth of  
25 the tractor-trailer injuring himself. Plaintiff alleges that as  
26

1 a result of this fall, plaintiff Ronald Kopal suffered injuries  
2 to his neck and shoulder and subsequently required neck and  
3 right shoulder surgery.

4 Defendants dispute these allegations and claim that the  
5 force of the impact was not great enough to cause plaintiff  
6 Ronald Kopal to fall from the sleeper berth, or cause him any  
7 injury.

8 Further, defendants dispute the monetary claims of  
9 plaintiff in intervention, asserting that sums paid to or on  
10 behalf of plaintiff Ronald Kopal were not paid for accident-  
11 related reasons.

12  
13 VI. DISPUTED EVIDENTIARY ISSUES

14 Defendants intend to bring the following motion:

15 Motion to bifurcate liability and damages portions of the  
16 trial.

17 Plaintiff in intervention intends to bring the following  
18 motion:

19 Motion in limine under Daubert v. Merrell Down  
20 Pharmaradicals, Inc. 509 U.S. 579 (1993) to exclude any  
21 biomechanical opinions by Daniel S. Girvan on the grounds he is  
22 not qualified.

23 VII. RELIEF SOUGHT

24 Plaintiff in intervention Stevens Transport, Inc. seeks  
25 reimbursement for all monetary benefits paid to or on behalf of  
26

1 its employee Ronald Kopal as a consequence of the accident.

2 VIII. POINTS OF LAW

3 The parties shall brief the following points of law in  
4 their trial briefs: Elements of Stevens' claim for reimbursement  
5 and any affirmative defenses.

6 The parties are free to brief any additional points of law  
7 necessary for resolution at trial.

8 Trial briefs shall be filed with the court no later than  
9 seven(7) days prior to the date of trial.

10 IX. ABANDONED ISSUES

11 1. The general damage claims of plaintiff Ronald Kopal as  
12 damages to be recovered by him.

13 2. The entirety of all claims brought by plaintiff  
14 Lisa Kopal.

15 X. WITNESSES

16 Plaintiff in intervention intends to call the following  
17 witnesses at trial:

18 William Tallent

19 Ronald Kopal

20 Charles Lovelace, M.D.

21 John Teig Port, M.D.

22 Pierre Herding, M.D.

23 Charles D. Mitchell, M.D.

24 David E. Ostrow, M.D.

1 Alfred Bugbee

2 William P. Duffy, M.D.

3 Jonathan S. Katz, M.D.

4 Gary T. Moran Ph.D.

5 Bernie Louis McCaskill, M.D.

6 Leslie D. Bigby

7 Dr. Joel Holliday.

8 Dr. Sam Kokoris.

9 Dr. B. Carmona.

10 Dr. Daniel Dow.

11 Dr. Harold Wagner.

12 Dr. Rerb Sol Ellman.

13 Dr. Abdallah Adham.

14 Dr. Alfonso Cardenas.

15 Dr. Yuri Lemeshev.

16 Dr. Abraham Abdo.

17 Dr. Jonathan Chrest.

18 Dr. Ahmed Elsehety.

19 Dr. Basim Jishi.

20 Dr. Steve Thompson.

21 Dr. Norvia Parr.

22 Dr. Randall Askins.

23 Dr. Randolph Leone.

24 Dr. Jack Nylund.

1 Dr. Dale Fisher.

2 Dr. Leonard Nadalo.

3 Dr. Richard Aldridge.

4 Dr. Bo Wang.

5 Dr. Ikechukwu Wsuji.

6 Dr. Richard Allison.

7 Dr. Robert Edmunson.

8 Dr. Gary King.

9 Dr. Pal Mathai.

10 Dr. Carla Anderson.

11 Dr. J. Cooper McKee.

12 Dr. Sidd Lo Zakaria.

13 Dr. Michael Carrol.

14 Dr. Elizabeth Eversull.

15 Dr. Butfi Basatnch.

16 Dr. Alfonso Cardenas.

17 Defendant anticipates calling the following witnesses:

18 Ronald Kopal

19 Lisa Kopal

20 Leslie D. Bigby

21 Patricia Bigby

22 Charles Lovelace, M.D.

23 John Teig Port, M.D.

24 Pierre Herding, M.D.

25

1 Charles D. Mitchell, M.D.

2 David E. Ostrow, M.D.

3 Alfred Bugbee

4 Dharampal S. Johal, M.D.

5 William C. Bergman, M.D.

6 Robert Z. Bruckman, M.D.

7 Daniel S. Girvan

8 Each party may call a witness designated by the other.

9 A. No other witnesses will be permitted to testify  
10 unless:

11 (1) The party offering the witness demonstrates that  
12 the witness is for the purpose of rebutting evidence which could  
13 not be reasonably anticipated at the Pretrial Conference, or  
14

15 (2) The witness was discovered after the Pretrial  
16 Conference and the proffering party makes the showing required  
17 in "B" below.

18 B. Upon the post-Pretrial discovery of witnesses, the  
19 attorney shall promptly inform the court and opposing parties of  
20 the existence of the unlisted witnesses so that the court may  
21 consider at trial whether the witnesses shall be permitted to  
22 testify. The evidence will not be permitted unless:

23 (1) The witnesses could not reasonably have been  
24 discovered prior to Pretrial;

25 (2) The court and opposing counsel were promptly  
26

1 notified upon discovery of the witnesses;

2 (3) If time permitted, counsel proffered the  
3 witnesses for deposition;

4 (4) If time did not permit, a reasonable summary of  
5 the witnesses' testimony was provided opposing counsel.

6 XI. EXHIBITS, SCHEDULES AND SUMMARIES

7 Plaintiff in intervention intends to offer the following  
8 exhibits:

9 1. Photographs of interior of cab showing plaintiff's  
10 position at various times.

11 2. Photographs of damage to truck from accident.

12 3. Incident report.

13 4. Summary of medical bills.

14 5. Medical treatment chart showing history of treatment.

15 6. Videotape of truck in motion.

16 7. Tape recording at independent medical examination by  
17 Dr. William C. Bergman and transcript of same.

18 8. Tape of independent medical examination by Dr. Robert  
19 Z. Bruckman and transcript of same.

20 9. Videotaped oral deposition of Dr. Charles Lovelace.

21 10. Videotaped oral deposition of Dr. John Teig Port.

22 11. Videotaped oral deposition of Dr. Pierre Herding.

23 12. Videotaped deposition of Dr. Charles D. Mitchell.

24 13. Videotaped deposition of Dr. David E. Ostrow.  
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1       14. Wage loss material, including W-2's produced by  
2 Stevens Transport, Inc.

3       15. Diagram of accident prepared by plaintiff.

4       16. All medical bills presented to plaintiff in  
5 intervention for payment, and all documents indicating payment  
6 by plaintiff in intervention.

7       17. All documents indicating payment of disability wages  
8 by plaintiff in intervention to plaintiff Ronald Kopal.

9       Defendant intends to introduce the following exhibits:

10       A. Blow-ups of diagrams attached to the report of Daniel  
11 S. Girvan.

12       B. Photographs of damage to Stevens' Transportation's  
13 tractor-trailer.

14       C. Plaintiff Ronald Kopal's medical records.

15       D. Transcript of Ronald Kopal's deposition.

16       E. Transcript of Lisa Kopal's deposition.

17       F. Videotaped oral deposition of Dr. Charles Lovelace.

18       G. Videotaped oral deposition of Dr. John Teig Port.

19       H. Videotaped oral deposition of Dr. Pierre Herding.

20       I. Videotaped deposition of Dr. Charles D. Mitchell.

21       J. Videotaped deposition of Dr. David E. Ostrow.

22       K. Plaintiff Ronald Kopal's employment records.

23       L. Transcript of Dharampal S. Johal, M.D.'s deposition.

24       M. Transcript of William C. Bergman, M.D.'s deposition.

1 N. Transcript of Robert Z. Bruckman, M.D.'s deposition.

2 O. Transcript of Daniel S. Girvan's deposition.

3 Each party may use an exhibit designated by the other.

4 A. No other exhibits will be permitted to be introduced  
5 unless:

6 (1) The party proffering the exhibit demonstrates  
7 that the exhibit is for the purpose of rebutting evidence which  
8 could not be reasonably anticipated at the Pretrial Conference,  
9 or

10 (2) The exhibit was discovered after the Pretrial  
11 Conference and the proffering party makes the showing required  
12 in paragraph "B," below.

13 B. Upon the post-Pretrial discovery of exhibits, the  
14 attorneys shall promptly inform the court and opposing counsel  
15 of the existence of such exhibits so that the court may consider  
16 at trial their admissibility. The exhibits will not be received  
17 unless the proffering party demonstrates:

18 (1) The exhibits could not reasonably have been  
19 discovered prior to Pretrial;

20 (2) The court and counsel were promptly informed of  
21 their existence;

22 (3) Counsel forwarded a copy of the exhibit(s) (if  
23 physically possible) to opposing counsel. If the exhibit(s) may  
24 not be copied, the proffering counsel must show that he has made  
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1 the exhibit(s) reasonably available for inspection by opposing  
2 counsel.

3 As to each exhibit, each party is ordered to exchange  
4 copies of the exhibit not later than fifteen (15) days from the  
5 date of this Pretrial Order. Each party is then granted ten  
6 (10) days to object to the exhibit. In making the objection,  
7 the party is to set forth the grounds for the objection. The  
8 objections shall be served within 10 days and then filed within  
9 a reasonable time at least 7 days prior to trial. The attorney  
10 for each party is directed to appear before and present an  
11 original and one (1) copy of said exhibit to Harry Vine, Deputy  
12 Courtroom Clerk, at 8:30 a.m. on the date set for trial or at  
13 such earlier time as may be agreed upon. As to each exhibit  
14 which is not objected to, it shall be marked and may be received  
15 into evidence on motion and will require no further foundation.  
16 Each exhibit which is objected to will be marked for  
17 identification only.  
18

19 XII. DISCOVERY DOCUMENTS

20 Plaintiff intends to offer at trial (1) defendants  
21 responses to discovery and (2) the videotaped trial preservation  
22 deposition testimony of Charles Lovelace, M.D., John Teig Port,  
23 M.D., Pierre Herding, M.D., Charles D. Mitchell, M.D., David E.  
24 Ostrow, M.D.

25 Defendants intend to offer at trial the (1) plaintiffs'  
26

1 responses to defendants interrogatories; (2) the videotaped  
2 trial preservation deposition testimony of Charles Lovelace,  
3 M.D., John Teig Port, M.D., Pierre Herding, M.D., Charles D.  
4 Mitchell, M.D., David E. Ostrow, M.D., (3) deposition testimony  
5 of plaintiff Ronald Kopal and (4) depositions of all other  
6 witnesses not available at trial.

7       Plaintiff in intervention intends to offer at trial (1)  
8 defendants responses to discovery and (2) plaintiffs' responses  
9 to discovery and (3) the videotaped trial preservation  
10 deposition testimony of Charles Lovelace, M.D., John Teig Port,  
11 M.D., Pierre Herding, M.D., Charles D. Mitchell, M.D., David E.  
12 Ostrow, M.D., deposition testimony of plaintiff Ronald Kopal,  
13 and depositions of all other witnesses not available at trial.  
14

15               XIII. FURTHER DISCOVERY OR MOTIONS

16       Pursuant to the court's Status Conference Order, all  
17 discovery and law and motion was to have been conducted so as to  
18 be completed as of the date of the Pretrial Conference. That  
19 order is confirmed. The parties are free to do anything they  
20 desire pursuant to informal agreement. However, any such  
21 agreement will not be enforceable in this court.

22               XIV. STIPULATIONS

23       The parties stipulate that neither will show anything  
24 to the jury in opening statements without prior review by  
25 opposing counsel and approval of the court.  
26

1                                   XV. AMENDMENTS/DISMISSALS

2           The parties do not request leave to amend their pleadings.

3                                   XVI. FURTHER TRIAL PREPARATION

4           A.    Counsel are directed to Local Rule 16-285 regarding  
5 the contents of trial briefs. Such briefs should be filed seven  
6 (7) days prior to trial.

7           B.    Counsel are further directed to confer and to attempt  
8 to agree upon a joint set of jury instructions. The joint set  
9 of instructions shall be lodged with the court clerk seven (7)  
10 calendar days prior to the date of the trial and shall be  
11 identified as the "Jury Instructions Without Objection." As to  
12 instructions as to which there is dispute the parties shall  
13 submit the instruction(s) as its package of proposed jury  
14 instructions the first day of trial.

15           The parties are requested to submit a disc of all proposed  
16 jury instructions in word perfect 8.0.

17           C.    It is the duty of counsel to ensure that any  
18 deposition which is to be used at trial has been filed with the  
19 Clerk of the Court. Counsel are cautioned that a failure to  
20 discharge this duty may result in the court precluding use of  
21 the deposition or imposition of such other sanctions as the  
22 court deems appropriate.

23           D.    The parties are ordered to file with the court and  
24 exchange between themselves not later than one (1) week before  
25  
26

1 the trial a statement designating portions of depositions  
2 intended to be offered or read into evidence (except for  
3 portions to be used only for impeachment or rebuttal).

4 E. The parties are ordered to file with the court and  
5 exchange between themselves not later than one (1) week before  
6 trial the portions of Answers to Interrogatories which the  
7 respective parties intend to offer or read into evidence at the  
8 trial (except portions to be used only for impeachment or  
9 rebuttal).

10 F. Each party may submit proposed voir dire questions the  
11 party would like the court to put to prospective jurors during  
12 jury selection. Proposed voir dire should be submitted one (1)  
13 week prior to trial. The court will permit each side 10 minutes  
14 of supplemental voir dire.  
15

16 XVII. AGREED STATEMENTS

17 Presentation of all or part of the action upon an agreed  
18 statement of facts is not feasible.

19 XVIII. SEPARATE TRIAL OF ISSUES

20 Defendants reserve the right to move to bifurcate the issue  
21 of liability from damages.

22 XIX. ATTORNEYS' FEES

23 The matter of the award of attorneys' fees to prevailing  
24 parties pursuant to statute will be handled by motion in  
25 accordance with Local Rule 54-293.  
26

1 XX. EXPERTS

2 Stevens may call treating doctors as expert witnesses if  
3 those doctors were listed on its pre-complaint disclosure and if  
4 any opinion, sought to be introduced at trial, has been the  
5 subject of deposition testimony.

6 XXI. SCHEDULING OF PRE-TRIAL MOTIONS

7 The parties shall file all pre-trial motions by June 15,  
8 2007. Opposition shall be filed by June 29, 2007. Any reply  
9 shall be filed by July 20, 2007. The motions shall be heard on  
10 August 21, 2007 at 9 a.m. The pre-trial motions subject to this  
11 schedule include any in limine motions, any motion under  
12 Daubert, defendants' motion to bifurcate, and Stevens' motion  
13 for application of the Labor Code 3852 presumption.  
14

15 XXII. OBJECTIONS TO PRETRIAL ORDER

16 Each party is granted seven (7) days from the date of this  
17 Pretrial Order to object to it.

18 IT IS SO ORDERED.

19 DATED: May 23, 2007

20 /s/ David F. Levi  
21 DAVID F. LEVI  
22 United States District Judge  
23  
24  
25  
26